

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

May 31, 2011

Donta E. Vickers
34222 Bi-State Boulevard
Laurel, DE 19956

RE: *Donta E. Vickers v. Mountaire Farms, et al.*
C.A. No. S10A-11-005 RFS

Dear Mr. Vickers:

I have received your opening brief on appeal of a decision of the Unemployment Insurance Appeal Board (“Board”) denying your application for unemployment benefits. Mountaire Farms (“Employer”) did not file an answering brief. For the reasons explained below, the Board’s decision is affirmed.

The record shows the following facts. You worked for Employer from September 21, 2005 through November 23, 2009. You were absent from work on approved medical leave from November 16, 2009 through November 23, 2009. However, you did not return to work on that day.

You were arrested on November 17, 2009 and thereafter incarcerated until March 10, 2010, when you made bail. At that time you contacted your Employer and were apparently informed that you had been discharged on November 23, 2009. At trial a

week later, you were acquitted of the charges brought against you.

On April 15, 2010, you filed for unemployment benefits. All three administrative bodies found that you were discharged for good cause and denied your application for benefits. You appealed the Board's decision to this Court.

On appeal of a decision of an administrative board, this Court is limited to determining whether there is substantial evidence to support the board's findings and whether the decision is free from legal error. Title 19 *Del. C.* § 3323(a); *Kondzielawa v. Ferry*, 2003 WL 21350538 (Del. Super.).

Before addressing the issue you raise on appeal, I note certain facts of record. You testified below that you told your wife to inform Employer of your whereabouts while you were incarcerated, but nothing in the record supports this assertion. You did not assert that you were unable to call your Employer while incarcerated. You testified that you did not contact Employer until March 10, 2010. Thus, your unexplained absence from work lasted approximately 3 and ½ months.

The record contains no evidence of Employer's policy on absenteeism. Roland Parker, Employer's representative before the Appeals Referee, stated that "Date of termination was November 23, 2009. And the reason for failure to return from a leave of absence incarcerated." The Court infers that you were discharged because Employer learned of your incarceration and terminated you the day you were scheduled to return from your medical leave. Mr. Parker did not appear before the Board, and no further

statements were offered as to the reason for your discharge.

In your opening brief to this Court, your sole argument is that the paperwork for the Board hearing states that if one of the parties does not show up, the decision will be made in favor of the party who is present, and that the Board broke its own rules by finding against you despite Employer's absence. In fact, the paperwork addressed to you states: "Failure to appear for your hearing in a timely manner can result in your appeal being dismissed." That statement is directed to you, as the party bringing the appeal.

You do not dispute the Board's finding that your 3 and ½ month unexplained absence from work disqualified you from receipt of unemployment benefits.

Your appeal is **DENIED** and the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Sincerely yours,

Richard F. Stokes

Original to Prothonotary

xc: (1) Unemployment Insurance Appeal Board
(2) Mountaire Farms of Delmarva
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